

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANTHONY L. MORENO,
Plaintiff,

v.

JOSHUA PEFFLEY, et al.,
Defendants.

Case No. 22-cv-04520-VKD

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 24

Pro se plaintiff Anthony Moreno, a state prisoner at the Correctional Training Facility (“CTF”) in Soledad, California, asserts claims under 42 U.S.C. § 1983 against defendants L. Mendez, D. Naranjo, and Joshua Peffley for alleged violations of his due process and equal protection rights under the Fourteenth Amendment, and for alleged violation of state regulations regarding gang validation. Dkt. Nos. 6, 7. Mr. Moreno seeks declaratory and injunctive relief as well as damages. Dkt. No. 6 at 14-15. All parties have consented to magistrate judge jurisdiction. Dkt. Nos. 3, 13.

Defendants move for summary judgment on the ground that Mr. Moreno failed to exhaust administrative remedies prior to filing suit as required by the Prison Litigation Reform Act (“PLRA”) and state law. Dkt. No. 24 at 1. Mr. Moreno did not file an opposition or otherwise respond to the motion. The Court finds this matter suitable for resolution without oral argument. *See* Civil L.R. 7-1(b).

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I. BACKGROUND

The following facts are undisputed unless otherwise noted¹:

A. Parties

At all times relevant to this action, Mr. Moreno was a state prisoner incarcerated at CTF. Dkt. No. 6 at 5. Defendants were employees of CTF. *Id.* Mr. Peffley was an Assistant Institutional Gang Investigator, *id.* at 24; Mr. Mendez was a correctional counselor, *id.* at 6; and Mr. Naranjo was a captain, *id.* at 2.

B. Mr. Moreno's Allegations

According to the amended complaint, on March 17, 2020, Mr. Peffley conducted a search of Mr. Moreno's cell and confiscated several items. *Id.* at 8. Mr. Peffley then used some of these items as "source items" in the validation package that he prepared on March 23, 2020 to establish Mr. Moreno's affiliation with the Mexican Mafia ("EME"). *Id.* Mr. Moreno says that the evidence included a "fabricated address book with individuals listed . . . as being validated and/or suspected EME associates." *Id.* at 8. Mr. Moreno contends that this address book was "fabricated" because there was no record that such an item was confiscated from his cell by Mr. Peffley. *Id.*

On July 7, 2020, Mr. Moreno appeared before a Security Threat Group Classification Committee. *Id.* at 9. Mr. Mendez and Mr. Naranjo were members of the committee. Mr. Moreno argued to the committee that Mr. Peffley had denied him an opportunity to rebut evidence purporting to show his affiliation with EME, and that the address book was fabricated. *Id.* Nevertheless, the committee approved Mr. Moreno's validation as an associate of the EME. *Id.* Mr. Moreno contends that he and other Hispanic prisoners "have been targeted, punished, and injured by the named-Defendants because of their race without evidence of dangerous activity" while non-Hispanic incarcerated people have more favorable terms and conditions of confinement.

¹ As Mr. Moreno has filed a verified complaint, the Court may rely on statements of fact in the amended complaint that he is competent to assert as if they were made by declaration. *Schroeder v. McDonald*, 55 F.3d 545, 460 (9th Cir. 1995) ("A verified complaint may be used as an opposing affidavit under Rule 56 [if it is] based on personal knowledge and set[s] forth specific facts admissible in evidence.") (internal citation omitted).

1 *Id.* at 12.

2 **C. Mr. Moreno's Grievances**

3 Using the administrative grievance processes then available to him at CTF, Mr. Moreno
4 submitted two grievances relevant to the claims asserted in this action during the period:
5 Grievance Log No. 12250 and Grievance Log No. 119185.² Dkt. No. 24-1 ¶¶ 6-8, Exs. A, B.

6 **1. Grievance Log No. 12250**

7 On July 6, 2020, Mr. Moreno submitted Grievance Log No. 12250, alleging that Mr.
8 Peffley committed a felony under California Penal Code § 134 by “preparing false documentary
9 evidence.” Dkt. No. 24-3, ¶ 3, Ex. A. More specifically, the grievance alleges that “[o]n 6-08-20
10 [Mr. Moreno] received a CDC 128-B2 from O.C.S. stating their action. Due to c/o Peffley
11 submitting a CDCR 128-B5 to O.C.S. where he specifically notes his false record and deceitful
12 purpose, Mr. Peffley committed a felony under the law.” The grievance does not specifically
13 identify the “false record” at issue but it attaches three documents: (1) a form CDC 128-B2
14 identifying four items received as part of an STG validation package; (2) a form CDCR 128-B5
15 memorandum from CTF, identifying the same four items; and (3) a roster dated February 14, 2020
16 showing representatives to the “Facility C. Men’s Advisory Council.” *Id.*, Ex. A.

17 The CTF Office of Grievances (“OOG”) issued a decision in response to Grievance Log
18 No. 12250 on July 16, 2020, disapproving the grievance and advising Mr. Moreno of his right to
19 appeal the decision. *Id.* ¶ 5, Ex. C. Mr. Moreno did not appeal the decision. *Id.* at ¶ 6.

20 **2. Grievance Log No. 119185**

21 On May 18, 2021, Mr. Moreno submitted Grievance Log No. 119185, alleging that his
22 “validation as an associate of the [EME] was flawed, falsified evidence was used, and [Mr.
23 Moreno’s] due process rights were violated.” Dkt. No. 24-1 ¶ 9, Ex. C at 22-24.³ He attached
24 several documents to the grievance: (1) a “Classification Committee Chrono” dated July 7, 2020;

25
26 ² In his amended complaint, Mr. Moreno relies exclusively on Grievance Log No. 119185. *See*
27 Dkt. No. 6 at 2. He identifies no other relevant grievances.

28 ³ Page number citations for exhibits attached to the supporting declarations are to those assigned
by the ECF system.

(2) an “STG-Threat Assessment Interview” summary dated October 4, 2019; (3) a “Security Squad Receipt” for a cell search conducted on March 17, 2020; and (4) an excerpt from the CDCR 128-B5 to which Mr. Moreno refers in Grievance Log No. 12250. Dkt. No. 24-1, Ex. C at 26-36. The grievance challenges Mr. Moreno’s validation as an EME associate, asserting that the evidence for his classification was falsified or misinterpreted, and that Mr. Moreno should have been afforded an additional 24 hours to rebut the evidence. *Id.* at 24.

On May 19, 2021, the OOG rejected the grievance as untimely. Dkt. No. 24-1 ¶ 9, Ex. C at 18. Specifically, the decision stated:

You did not submit the claim within the timeframe required by California Code of Regulations, title 15. The date you discovered the adverse policy decision, action, condition, or omission by the Department was 7/22/2020; the date you submitted this claim was 5/18/2021. You should have submitted your claim on or by 8/21/2020 to meet the 30 calendar day requirement set forth in the regulations.

Id.

Mr. Moreno appealed this decision to the CDCR’s Office of Appeals (“OOA”), asserting that he did not receive a copy of the “Classification Committee Chrono” until April 20, 2021. Dkt. No. 24-1, Ex. C at 12. The OOA did not timely respond to Mr. Moreno’s appeal. On April 16, 2022, the OOA issued a response acknowledging that OOA did not respond to Mr. Moreno’s appeal within 60 calendar days, stating “[d]ue to the expiration of time, this response of the Office of Appeals will be the only response.” *Id.* at 11.

II. LEGAL STANDARD

A motion for summary judgment should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears the initial burden of informing the court of the basis for the motion, and identifying portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits which demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to meet its burden, “the moving party must either produce evidence negating an essential element of the nonmoving party’s claim or defense or show that the nonmoving party does not

have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.”
Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d 1099, 1102 (9th Cir. 2000).

If the moving party meets its initial burden, the burden shifts to the non-moving party to produce evidence supporting its claims or defenses. *See id.* at 1102. The non-moving party may not rest upon mere allegations or denials of the adverse party’s evidence, but instead must produce admissible evidence that shows there is a genuine issue of material fact for trial. *See id.* A genuine issue of fact is one that could reasonably be resolved in favor of either party. A dispute is “material” only if it could affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248-49.

III. DISCUSSION

In his amended complaint, Mr. Moreno asserts the following claims against defendants:

(1) Fourteenth Amendment due process violation for falsifying evidence of Mr. Moreno’s association with the EME and denying him an opportunity to rebut evidence that was used to validate his association with the EME; (2) Fourteenth Amendment equal protection violation for discrimination based on his race; and (3) a state law claim for failure to comply with California regulations. Dkt. Nos. 6, 7. Defendants do not seek summary judgment on the merits of Mr. Moreno’s claims at this time; rather, they seek judgment in their favor on the ground that Mr. Moreno failed to properly exhaust all available administrative remedies with respect to these claims. Dkt. No. 24 at 1.

A. PLRA Exhaustion Requirement

The Prison Litigation Reform Act of 1995 (“PLRA”) amended 42 U.S.C. § 1997e to provide that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is mandatory. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citing *Booth v. Churner*, 532 U.S. 731, 739 (2001)). “Prisoners must now exhaust all ‘available’ remedies, not just those that meet federal standards.” *Id.* at 85.

The PLRA’s exhaustion requirement cannot be satisfied “by filing an untimely or

otherwise procedurally defective administrative grievance or appeal.” *Woodford*, 548 U.S. at 84. “Proper exhaustion” requires compliance with prison grievance procedures. *Id.* at 90-91 (footnote omitted); *Jones v. Bock*, 549 U.S. 199, 217-18 (2007). Procedures may vary from system to system and claim to claim, but it is the prison’s requirements, and not the PLRA, that define the boundaries of proper exhaustion. *Jones*, 549 U.S. at 218.

Nonexhaustion under § 1997e(a) is an affirmative defense.⁴ *Id.* at 211. Defendants have the burden of raising and proving the absence of exhaustion, and prisoners are not required to specifically plead or demonstrate exhaustion in their complaints. *Id.* at 215-17. Defendants must produce evidence proving failure to exhaust in a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. *Id.* If undisputed evidence viewed in the light most favorable to the prisoner shows a failure to exhaust, defendants are entitled to summary judgment under Rule 56. *Id.* at 1166. But if material facts are disputed, summary judgment should be denied. *Id.*

B. California’s Prison Grievance Procedures

During the period applicable to this action, prisoners incarcerated in the California prison system were required to submit grievances in accordance with the procedures in Title 15 of the California Code of Regulations, sections 3480-3487.⁵ These procedures apply to prisoner claims disputing “a policy, decision, action, condition, or omission by the [California Department of Corrections and Rehabilitation (“CDCR”)] or departmental staff that causes some measurable harm to their health, safety, or welfare.” Cal. Code Regs. tit. 15, § 3481(a) (2020).

Under the regulations, a prisoner must submit a grievance “within 30 calendar days of discovering an adverse policy, decision, action, condition, or omission” by CDCR to the applicable OOG. *Id.* §§ 3481(a), 3482(b). Discovery occurs when the prisoner “knew or should

⁴ In contrast, California requires inmates to specifically plead exhaustion. *See infra* at 10.

⁵ Effective June 1, 2020, sections 3084 through 3084.9 of Title 15 were repealed and replaced with renumbered and amended provisions at sections 3480 through 3487. *See Tooker v. Mak*, No. 20-cv-07373-HSG, 2022 WL 2668381, at *3 (N.D. Cal. July 11, 2022) (describing regulatory history), *appeal dismissed*, No. 22-16123, 2023 WL 387042 (9th Cir. Jan. 9, 2023). These sections were further amended effective January 1, 2022. *See* Cal. Code Regs. tit. 15, § 3480(a) (2022). This order refers to the regulations in effect at the time of Mr. Moreno’s grievances.

1 have reasonably known” of the adverse departmental action. *Id.* Among other requirements, the
 2 grievance must “describe all information known and available to the claimant regarding the claim,
 3 including “key dates and times, names and titles of all involved staff members (or a description of
 4 those staff members), and names and titles of all witnesses, to the best of the claimant’s
 5 knowledge.” *Id.* § 3482(c)(2). The grievance must “include all supporting documents available to
 6 the claimant related to the claim or identify to the best of the claimant’s ability all relevant records
 7 with sufficient specificity for those records to be located.” *Id.* § 3482(c)(4).

8 The OOG must issue a written response to the grievance within 60 calendar days. *Id.*
 9 § 3483(i). As to each claim, the response must include one of the ten decisions listed in the
 10 regulation, which include “approved,” “disapproved,” and “rejected.” *Id.* § 3483(i)(1)-(10).
 11 Notably, the OOG’s ability to reject a grievance is limited to five specific reasons: (1) the claim
 12 was not submitted within the timeframe under the regulations; (2) the claim concerns an
 13 anticipated policy, decision, action, condition, or omission by the Department or staff; (3) the
 14 claim is substantially duplicative of a prior claim by the same claimant; (4) the claim concerns
 15 harm to a person other than the claimant; and (5) the claim concerns the regulatory framework for
 16 the grievance and appeal process itself. *Id.* §§ 3483(i)(6), 3487(a)(1)-(5); *see also id.* § 3483(e).

17 As a general matter, if the prisoner is dissatisfied with the OOG’s decision he may appeal
 18 the decision to the OOA. *Id.* § 3485(a). This includes an OOG decision of “disapproved” or
 19 “rejected.” *See id.* § 3483(i)(1), (6). The appeal must be submitted within 30 calendar days of the
 20 date the claimant “knew or should have reasonably known of the [OOG’s] decision.” *Id.*
 21 § 3485(b). The OOA must issue a written response to the appeal within 60 calendar days. *Id.*
 22 § 3486(i). As to each claim, the response must include one of the ten decisions listed in the
 23 regulation, which includes “time expired.” *Id.* § 3486(i)(1)-(10). The OOA may respond to an
 24 appeal with a “time expired” decision if it was not able to respond to the claim within the time
 25 provided in the regulation. *Id.* § 3486(i)(10).

26 A prisoner must file a grievance with the OOG and timely appeal an adverse OOG
 27 decision to the OOA in order to properly exhaust his administrative remedies. *Id.* § 3483(m)(1).
 28

C. Availability of Administrative Remedies

Having carefully reviewed the record presented, including the amended complaint and defendants' summary judgment papers, the Court finds that it is undisputed that the administrative remedies provided in Title 15 of the California Code of Regulations, sections 3480-3487, were available to Mr. Moreno with respect to the claims at issue in this action. Mr. Moreno does not allege that he was effectively prevented from submitting grievances or appeals, and nothing in the record suggests otherwise. *See, e.g., Fordley v. Lizarraga*, 18 F.4th 344, 351–52 (9th Cir. 2021) (summarizing circumstances in which administrative remedies are deemed unavailable).

Mr. Moreno's appeal of the OOG's decision rejecting as untimely his grievance in Grievance Log No. 119185 might be read as asserting that he did not file his grievance earlier because he did not obtain a copy of his "Classification Committee Chrono" until April 20, 2021. *See* Dkt. No. 24-1, Ex. C at 12. However, accepting his assertion regarding the date he received the "Classification Committee Chrono" as true, there is no indication that failure to obtain this document earlier prevented Mr. Moreno from submitting a grievance within 30 calendar days of the date he learned of the classification committee's decision validating him as an EME associate. Specifically, nothing in the record suggests that Mr. Moreno could not have made exactly the same claims he eventually asserted in Grievance Log No. 119185 without a copy of the "Classification Committee Chrono" in hand. Mr. Moreno was not required to submit with his grievance any supporting documents that were not available to him, and he had the option to merely identify the "Classification Committee Chrono" as a supporting document so that this record could be located by CDCR staff in considering his grievance. *See* Cal. Code Regs. tit. 15, § 3482(c)(4) (2020).

D. Federal Claims**1. Due Process Claim**

The Court first considers whether Mr. Moreno has exhausted his administrative remedies with respect to his Fourteenth Amendment due process claim. As noted above, the amended complaint asserts that defendants falsified evidence of Mr. Moreno's association with the EME and denied him an opportunity to rebut evidence that was used to validate his association with the

1 EME, in violation of his due process rights.

2 With respect to Grievance Log No. 12250, defendants have shown that, to the extent this
3 grievance can be construed to encompass Mr. Moreno’s claim for violation of his due process
4 rights, Mr. Moreno failed to exhaust his administrative remedies by failing to appeal the OOG’s
5 “disapproved” decision to the OOA. *Id.* § 3483(m)(1).

6 With respect to Grievance Log No. 119185, defendants have shown that that this grievance
7 was not timely submitted to the OOG because Mr. Moreno did not submit it within 30 calendar
8 days of discovering the adverse action that is the subject of the grievance. As noted above,
9 Grievance Log No. 119185 was submitted on May 18, 2021, more than nine months after the date
10 Mr. Moreno learned that he had been listed as an “active Security Threat Group (STG) – 1
11 Validated Mexican Mafia (EME) associate,” following the proceeding in which allegedly false
12 evidence was used against him and he was allegedly denied sufficient time to rebut the evidence.
13 Dkt. No. 24-3 at 15; *see also* Dkt. No. 6 at 9; Dkt. No. 24-1 at 15. Because Mr. Moreno did not
14 file Grievance Log No. 119185 until May 18, 2021, it was rejected as untimely. *See* Cal. Code
15 Regs. tit. §§ 3483(i)(6), 3487(a)(1) (2020). According to the applicable regulations, a claim is not
16 exhausted if it was rejected as untimely, pursuant to subsection 3487(a). *Id.* §§ 3486(i), (m).
17 Furthermore, the Supreme Court has held that “an untimely or otherwise procedurally defective
18 administrative grievance or appeal” cannot satisfy the PLRA’s exhaustion requirement. *See*
19 *Woodford*, 548 U.S. at 84.

20 As it is undisputed that Mr. Moreno did not submit Grievance Log No. 119185 within 30
21 calendar days of discovering the adverse actions at issue, that grievance cannot serve as a basis for
22 exhaustion of Mr. Moreno’s administrative remedies. This is so, even though Mr. Moreno timely
23 appealed the OOG’s rejection decision to the OOA. Because the original grievance was
24 procedurally defective, it cannot constitute proper exhaustion of Mr. Moreno’s due process claim
25 against any defendant.⁶ *See Woodford*, 548 U.S. at 90-91.

26
27 ⁶ Defendants separately argue that neither of the two grievances makes any mention of defendants
28 Mendez and Naranjo. Dkt. No. 24 at 17. This is incorrect, as Grievance Log No. 119185 refers to
both Mr. Peffley and Mr. Mendez by name, and Mr. Naranjo’s name appears in the supporting
documents. Dkt. No. 24-1 at 22, 27.

2. Equal Protection Claim

The Court next considers whether Mr. Moreno has exhausted his administrative remedies with respect to his Fourteenth Amendment equal protection claim. As noted above, the amended complaint asserts that defendants discriminated against Mr. Moreno with respect to his conditions of confinement based on his race, in violation of his equal protection rights.

As defendants observe, neither Grievance Log No. 12250 nor Grievance Log No. 119185 mentions discrimination based on race, and neither refers to the use of race as a proxy for gang membership, as Mr. Moreno alleges in his amended complaint. While a grievance “need not include legal terminology or legal theories” or “every fact necessary to prove each element of an eventual legal claim,” *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009), neither of Mr. Moreno’s grievances suggest that he believed he was treated unfairly with respect to classification because of his race or ethnicity.

Mr. Moreno identifies no other grievance in which he claims to have exhausted his administrative remedies with respect to his equal protection claim. *See* Dkt. No. 6. Accordingly, the Court concludes that Mr. Moreno has failed to exhaust properly his administrative remedies with respect to this claim.

E. State Law Claim

In its screening order, the Court construed the amended complaint as asserting a claim that defendants violated CDCR regulations for gang validation by denying Mr. Moreno an opportunity to rebut the evidence of his association with the EME. The Court recognized that this claim raises the same issues and is based upon the same factual allegations as Mr. Moreno’s federal due process claim. *See* Dkt. No. 7 at 5. Defendants argue that Mr. Moreno’s state law claim is also barred for failure to exhaust administrative remedies. Dkt. No. 24 at 18.

“When a district court sits in diversity, or hears state law claims based on supplemental jurisdiction, the court applies state substantive law to the state law claims.” *Mason & Dixon Intermodal, Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056, 1060 (9th Cir. 2011). California also requires exhaustion of administrative remedies before a claim based on state law may be filed in court. *Wright v. State of California*, 122 Cal. App. 4th 659, 666 (2004). However, California law

1 does not treat exhaustion as an affirmative defense, but instead treats it as an element of the claim,
 2 requiring a prisoner to allege that he exhausted his administrative remedies or that he had a valid
 3 excuse for not exhausting the administrative remedies in his complaint. *See Foster v. Sexton*, 61
 4 Cal. App. 5th 998, 1023–24 & n.3 (2021).

5 Mr. Moreno’s state law claim against defendants for their alleged failure to comply with
 6 California’s validation regulations is based on the same allegations as his federal due process
 7 claim, and the same grievance procedures apply. For the reasons discussed above with respect to
 8 his federal due process claims, Mr. Moreno did not properly exhaust his administrative remedies
 9 for his related state law claim, as required by California law.

10 In a single sentence in their summary judgment motion, defendants suggest that, in
 11 addition to exhausting his administrative remedies under Title 15 of the California Code of
 12 Regulations, Mr. Moreno was required to comply with the California Government Claims Act and
 13 failed to do so. *See* Dkt. No. 24 at 13. The California Government Claims Act (“Act”) requires a
 14 person to present his claim to the California Victim Compensation and Government Claims Board
 15 before he may file an action for damages against a California governmental entity or employee
 16 “for death or for injury to person or to personal property.” Cal. Gov. Code § 911.2; *see* Cal. Gov’t
 17 Code §§ 905.2, 911.2, 945.4, 950.2. The Act provides that a plaintiff may not sue a public
 18 employee for “money or damages” until he has presented the “claim” to the appropriate entity, and
 19 the entity has either acted upon or rejected the claim. Cal. Gov. Code §§ 905, 945.4, 950.2. Even
 20 assuming Mr. Moreno had a viable state law claim, the limited record before the Court does not
 21 permit the Court to find, as a matter of law, that compliance with the Act was required and that no
 22 relevant claim was submitted. *See* Dkt. No. 24-2 ¶ 4, Ex. C (declaration of records custodian
 23 research relating to claims by Mr. Moreno pertaining solely to March 17, 2020, the date of the cell
 24 search). Therefore, the Court denies defendants’ motion for summary judgment on this ground.

25 **IV. CONCLUSION**


26 For the foregoing reasons, defendants’ motion for summary judgment is granted for failure
 27 to exhaust administrative remedies. Dkt. No. 24. The Court will enter judgment accordingly.

28 The Clerk shall terminate any other pending motions as moot and close the case.

This order terminates Docket No. 24.

IT IS SO ORDERED.

Dated: November 4, 2024


Virginia K. DeMarchi
United States Magistrate Judge

United States District Court
Northern District of California